***United States Court of Appeals***

***for the***

***District of Columbia Circuit***


# TRANSCRIPT OF RECORD

**BRIEF AND JOINT APPENDIX FOR APPELLANT**

IN THE

# UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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APRIL TERM, 1954

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**No. 12,142**

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OLA MARY GASKINS,
*Appellant,*

v.



UNITED STATES OF AMERICA,
*Appellee.*

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**Appeal from the United States District Court for the District of Columbia**

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# No. 12,142

## QUESTIONS PRESENTED

I Was the real evidence presented in this case obtained as the result of an unconstitutional search and seizure?

II Was the trial judge correct in refusing to reconsider this question on the ground that a pre-trial hearing on the matter, resulting in a decision adverse to appellant, had become the law of the case and thus binding upon himself?

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## BRIEF ON BEHALF OF APPELLANT

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### JURISDICTIONAL STATEMENT

The appellant herein appeals from a criminal conviction and sentence sustained in the United States District Court for the District of Columbia. The jurisdiction of this Court is provided for under the law of Title 28, United States Code, section 1291, 1952 Ed.

## STATEMENT OF THE CASE

Appellant was charged with narcotic law violation. The government relied upon the statutory presumption provision which requires only proof of possession.

The evidence showed that an arrest warrant based on illegal drug activity was outstanding for appellant's husband, one "Cherokee." Understand that he could be found at 629 Q St., N.W., three plain clothes detectives proceeded to that address and found it to be a residential dwelling. One of the three knocked on the door or rang the bell. The door was in a locked condition, and upon hearing the sound of people inside and someone speaking the word "police," the detectives broke the door in. These men made no announcement whatsoever of intent or purpose to the inmates. (J.A. pg. 10.) The subject of the arrest warrant was located in the kitchen to the rear of the house and placed under attachment forthwith.

One of the officers followed appellant out of the kitchen, through a hallway and into the bathroom, where he claimed he saw her place a small envelope of drugs into the commode. While the toilet was still flushing, the policeman reached in and retrieved the package. Similar packages were then found in appellant's stocking and her purse. The remainder of the house was searched and no contraband found. (J.A. pg. 3, 4.)

Appellant testified substantially as above, but insisted that the bathroom door was closed when she deposited the envelope into the commode and that the detective invaded her toilet privacy by jerking open the door. She further explained that she was no drug addict but that her husband ("Cherokee") was; and, that the drugs were his. When the police rang the front door bell, her husband "Cherokee" had given her the three packages and ordered her to dispose of them. (J.A. pg. 21, 22.) Appellant's husband corroborated these views, and testified that he thought he could delay the officers long enough for his wife to get rid of his "stuff." (J.A. pg. 22.)

A usual pre-trial move to suppress was made and overruled. The trial judge refused to consider the legality or illegality of the seizure and admitted the questioned evidence on the ground that he was bound by the pre-trial judge's ruling since it had become the law of the case and binding upon him. (J.A. pg. 4, 5, 9.)

The jury considered this evidence and found the appellant guilty as indicted.

## STATEMENT OF POINTS

1. Breaking of outer door without statement of purpose was illegal and subsequent seizures of evidence as a result thereof were thereby made unreasonable.

2. The search which resulted in the questioned seizure was also illegal because of its general exploratory nature.

3. The trial court erred in considering himself bound by the ruling of another judge on a pre-trial motion to suppress the questioned evidence.

## ARGUMENT I

The evidence left no dispute but that three men broke into the dwelling premises involved through a locked door at night time. Fortunately it turned out that these intruders were officers of the law searching for a man named "Cherokee," whom they felt might be in this particular home. They didn't have an arrest warrant for "Cherokee" but did come armed with rumors that one had been issued to someone, somewhere, sometime.

Trial of the issues showed just as clearly that these plain clothes policemen gave no announcement of purpose whatsoever before breaking in. The only excuse claimed by these men is that at least one of the persons within suspected them as officers, even though they lacked any indication of officialdom.

The evils which condonation of this type of nighttime house breaking might invite need no emphasis. If three men were to unceremoniously break into my home, in the

night, I might be tempted to shoot them, and this even if I were a judge. Such conduct has been sternly reprimanded by this Court previously, and still it goes on.

The opinion of *Accarino* v. *U. S.*, 85 U.S. App. D.C. 394, 179 F (2) 456 (1949), after reviewing previous decisions from the early English days when a man's home was spoken of as his castle, says this:

> "Upon one topic there appears to be no dispute in the authorities. Before an officer can break open a door to a home, he must make known the cause of his demand for entry. There is no claim in the case at bar that the officers advised the suspect of the cause of their demand before they broke down the door. Upon that clear ground alone, the breaking of the door was unlawful, the presence of the officers in the apartment was illegal and unlawful, and so the arrest was unlawful. It follows that the search was unlawful and the evidence thus procured should have been suppressed."

Again, just last December, this Court ruled on point in *Gatewood* v. *U. S.*, — U.S. App. D.C. —, No. 11,740 (1953). Reading from that opinion:

> "In *Accarino* v. *U. S.*, 85 U.S. D.C. 394, 179 F (2) 456 (1949), we reviewed the authorities and found them unanimous in holding that before an officer can break open the door to a home, he must make known the cause of his demand for entry. The government's evidence in this case showed the officers gained entrance to Gatewood's apartment through falsehood, followed by force without first disclosing to him the true reason they desired to enter. * * * The ruling just quoted applies with even greater force where, as here, the unannounced purpose of officers who forcibly invade a citizen's home is not to arrest him but some other person who is thought to be within."

## ARGUMENT II

After entering this home, the search which resulted in discovery of the questioned evidence was of a general exploratory nature illegally invading the privacy of the female appellant.

As the officer candidly testified the only thing which caused him to follow appellant out of the kitchen down the hallway and into the bathroom was "suspicion,"—not probable cause. (J.A. pg. 37.) The search of this toilet and appellant's person was made after the arrest had been made. No aspect of their legal duties necessitated any further probing or searching. The law on point as to the searching of other persons, rooms, etc., in a general nature can best be gleaned from these three cases: *U. S.* v. *Rabinowitz*, 339 U.S. 56, 70 S. Ct. 430 (1950), where it was said:

> "We do not understand the *Marron* case to have been drained of contemporary vitality by *Go-Bart Co.* v. *U. S.*, 282 U.S. 344, 51 S. Ct. 153, and *U. S.* v. *Lefkowitz*, 285 U.S. 452, 52 S. Ct. 420. These cases condemned general exploratory searches, which cannot be undertaken by officers with or without a warrant. In the instant case the search was not general or exploratory by whatever might be turned up. Specificity was the mark of the search and seizure here. There was probable cause to believe that respondent was conducting his business illegally. The search was for stamps printed illegally, which were thought upon the most reliable information to be in the possession of and concealed by the defendant in the very room where he was arrested, over which room he had immediate control and in which he had been selling such stamps unlawfully. *Harris* v. *U. S.*, 331 U.S. 145, which has not been overruled, is ample authority for the more limited search here considered. In all the years of our Nation's existence, with special attention to the Prohibition Era, it seems never to have been questioned seriously that a limited search such as here conducted as incident to a lawful arrest was a reasonable search and therefore valid. It has been considered in the same pattern as search of the person after lawful arrest.
>
> "What is a reasonable search is not to be determined by any handy and fixed formula. The constitution does not define what are 'unreasonable searches' and regrettably in our discipline we have not ready a litmus-paper test. The recurring questions of the reasonableness of searches must find resolution in the facts and

> circumstances of each case. Reasonableness is in the first instance for the District Court to determine. We think the District Court's conclusion that here the search and seizure were reasonable should be sustained because: (1) the search and seizure were incident to a valid arrest; (2) the place of the search was a business room to which the public, including the officers, were invited; (3) the room was small and under the immediate and complete control of respondent; (4) the search did not extend beyond the room used for unlawful purposes; (5) the possession of the forged and altered stamps was a crime, just as it is a crime to possess burglar's tools, lottery tickets or counterfeit money."

The other two cases are *Go-Bart Importing Co.*, v. *U. S.*, 282 U.S. 344, 51 S. Ct. 153 and *Lefkowitz* v. *U. S.*, 285 U.S. 452, 52 S. Ct. 420.

Of course, in applying a legal principle like this one, each case must be studied as to its particular facts. But, if a young lady can't expect the Constitution to promise her privacy in her own toilet, then that great Charter requires amendment.

## ARGUMENT III

The illegality of the entry was shown even more clearly at the trial than at the preliminary hearings under Federal Criminal Rule 41 (e). It was only there that it was seen how the forced entry was made without announcement of intent or purpose.

The Trial Court should have considered the Constitutional question *de novo*, rather than finding himself bound by the pre-trial motion ruling. This was a substantial error.

In the above relied upon *Gatewood case,* though *obiter dictum*, it was said:

> "Were it necessary to a decision here, we should be inclined to hold, as we intimated in the *Cefaratti case,* that under Rule 41 (e) a pre-trial denial of a motion to suppress, made after indictment, is not binding on

the trial judge. But, regardless of which judge made the ruling which actually admitted the questioned evidence, it was error to do so.

## CONCLUSION

Persuasion that legal error was committed below requires only presentation and not argument. It is respectfully submitted that the case should be reversed.

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# APPENDIX

1

**PROCEEDINGS** 2

* * * * * * * * * *

SEYMOUR RABOY

was called as a witness by the United States and, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Flannery:

Q. Please state your full name. A. Seymour Raboy.

Q. Are you a member of the Metropolitan Police Department attached to the narcotic squad? A. I am, sir.

Q. On December 16, 1952, were you so employed? A. Yes, I was.

3 Q. Directing your attention to that date, December 16, 1952, and to the hour around 10:40 p.m., were you on duty that day? A. Yes, sir, I was.

Q. Were any other officers with you at that time? A. Detective Herring and Officer Hawkins.

Q. Had there at that time been issued a warrant for a certain person named Clifton Neal? A. A warrant was issued for a person named Cherokee.

Q. Cherokee? A. Yes, sir.

Q. All right. Did you have occasion to go to certain premises in the District of Columbia on that day? A. Yes, sir, I did.

Q. To what premises did you go? A. 629 Q Street, Northwest.

Q. Why did you go there? A. We had information that this person Cherokee was in those premises.

Q. Now, 629 Q Street, Northwest, is in the District of Columbia, isn't it? A. That is right, sir.

Q. Now, when you got to premises 629 Q Street, Northwest, Officer Hawkins and Herring was with you? A. Yes, sir.

4 Q. Describe what you did when you got there. A. We knocked at the door.

Q. On which floor is that? A. At the main entrance, the first floor going in.

Q. Yes. A. Somebody looked through the venetian blinds and we heard somebody say, "Police," and we heard running towards the back, and we forced the door open, and went into where—into the kitchen, located on the back of the first floor.

Q. Does that door lead into the kitchen? A. It is the main entrance door.

Q. Did you go into a certain part? A. Yes, sir, we went into the back.

Q. Did you go through a room to get to the kitchen? A. Went through a long foyer.

Q. Through a foyer? A. Yes, sir.

Q. And then back in the kitchen? A. Yes, sir.

Q. Then what happened when you got in the kitchen? A. Officer Hawkins recognized the man for whom the warrant had been issued, Cherokee, as Clifton Neal, and placed him under arrest.

Q. Where was he? In the kitchen? A. Yes, sir, he was in the kitchen.

5 Q. Were there any other people there? A. Yes, sir, there were.

Q. How many other people? A. In the kitchen I believe there were two other people at the time, besides Cherokee, Clifton Neal.

Q. Were they men or women? A. One was a man and one a woman.

Q. Now, then, what happened? A. After he was placed under arrest, I observed the defendant rush towards the bathroom, rush out of the room.

Q. You mean the defendant, Ola Mary Gaskins, seated at counsel table? A. Yes, sir.

Q. Was she one of the women whom you have testified about was in the kitchen? A. Yes, sir.

Q. You say she rushed out of the room? You mean, she

ran out of the room? A. She rushed. Well, I would say she rushed out of the room. She moved rapidly.

Q. What did you do when you saw her move rapidly from the room? A. I followed her.

Q. All right. Then what did you see? A. I followed her into the bathroom, where I observed her at the com-
6 mode, and place her hand underneath the seat of the commode, and the commode was then flushed.

Q. Did she flush it? A. Yes, sir.

Q. Where was this bathroom in relation to the kitchen about which you have just testified? A. Well, the bathroom was just a few feet from the kitchen, in the hallway. We had to go back into the hallway, and then turn to the right to get to the bathroom.

Q. Back? A. Back toward the front end of the house.

Q. Back toward the way in which you had come in in gaining entrance into the place? A. That is right.

Q. And you then go to the kitchen and out through the hallway? A. That is right.

Q. As you get to the hallway where is the bathroom, to the right or left? A. To the right.

Q. To the right? A. Yes, sir.

Q. And when you followed the defendant, how far were you behind her as she ran? A. Five or six feet.

7 Q. Five or six feet? A. Yes.

Q. Did you see her go into the bathroom? A. Yes.

Q. When she went in there, did she close the door? A. The door was open when I entered the bathroom, sir.

Q. And when you saw her put her hand in the commode, as you have just described, where were you, in the bathroom or at the entrance? A. I was in the bathroom—at the entrance to the bathroom.

Q. What did you do then? A. Well, I pushed her to the side from the commode, and lifted up the seat, and I found swirling on top of the flushed commode, a small brown envelope.

Q. What did you do then? A. I picked up the envelope.

Q. At the time you saw the envelope swirling around on the top of the water, did you see any stamps on it of any kind? A. No, sir, I didn't.

Q. Did you see any tax stamps on it after you picked it up? A. No, sir, I didn't.

Mr. Flannery: Will you mark the small envelope No. 1 and the large one No. 1A?

(The envelopes were marked Government's Exhibits No. 1 and No. 1A, respectively, for identification.)

Mr. Owen: Your Honor, may counsel interrupt and request the privilege of approaching the Bench?

The Court: You may.

(Thereupon counsel approached the Bench and the following occurred:)

Mr. Owen: Your Honor, we want to object to the introduction of this illegally seized evidence. I don't know whether the Court would rather have us object at the time it is offered, but at any rate, I felt to protect our interest we should object.

Now, there has been some mention of it, and I see the District Attorney has gotten out the envelopes and he is presenting them to the Court Clerk, I assume, for marking for identification purposes.

The Court: Not quite so loud.

Mr. Owen: I am sorry, Your Honor.

Now, a motion to suppress under the pre-trial rules and the Federal rules has been heard and determined by another judge and has been denied.

It is our purpose at this time to renew that motion and to request Your Honor to take testimony out of the hearing of the jury to decide as to whether or not this evidence should be introduced in the trial in which Your Honor is now presiding.

The Court: Was the search and seizure procedure attacked by motion, duly attacked and timely?

Mr. Owen: Yes, sir.

The Court: And ruled upon by one of the judges of this Court?

Mr. Owen: Yes, sir.

The Court: Adverse to the defendant?

Mr. Owen: Yes, Your Honor.

The Court: Well, the Court will not hear the evidence under those circumstances. It will consider that to be the law of the case.

Mr. Owen: Do I understand that the trial Court, Your Honor, will refuse to reconsider the motion to suppress, it having been ruled upon?

The Court: You may make the motion. The Court will consider it, but it will be under the condition that another judge has ruled on a similar motion in a pre-trial procedure, but you may make it.

Mr. Owen: Well, we will so make it at this time.

The Court: And the reporter will note the defendant made a motion.

Mr. Owen: There was another aspect that I felt should be brought to your attention.

The Court: Very well.

Mr. Owen: That is, that there is a conflict of evidence upon which the motion to suppress is predicated. It is not entirely a question of law, but a question as to what was the true factual situation concerning the issues of this case.

The law enforcement officers testified to one factual situation and the witnesses for the defense explained an entirely different factual situation.

We feel that under the decided law in such a case that a hearing should be had by the trial judge at this time out of the hearing of the jury.

The Court: What was the nature of the proceeding prior to the trial here?

Mr. Owen: We have a transcript here, Your Honor, of the testimony.

The Court: You may tell me. I will accept your word as to the nature of it.

Mr. Owen: The police officers testified—

The Court: Was testimony given?

Mr. Owen: Yes.

The Court: Was that conflicting testimony?

Mr. Owen: Yes, sir; conflicting testimony.

The Court: The conflict you are speaking about
11 was presented to the motions judge, though.

Mr. Owen: That is right, Your Honor. We think under the law the jury should have the ultimate right to decide this factual conflict, and not the pre-trial judge, but the trial judge, we think, is required to say whether or not there is sufficient evidence to allow it to be heard by the jury, although it has been acted on by a previous judge.

The Court: Well, Judge Letts ruled on it?

Mr. Owen: Yes, sir. Well, that is all we have.

The Court: Your objection will be noted, specifically, and it will be overruled.

Mr. Owen: Thank you.

* * * * * * * * * *

By Mr. Flannery:

Q. Officer Raboy, when I show you what has been marked Government Exhibit 1 for Identification and I will ask you if that is the envelope that you have just referred to in your testimony as having been found floating there in the commode? A. Yes, sir, it is.

Q. How do you identify that? A. By my initials, the time and the date on it, sir.

Q. When you recovered the envelope, did you look
12 into it? A. Yes, sir, I did.

Q. What was in it? A. There were three gelatin capsules, each containing a white power.

* * * * * * * * * *

13 Q. Then after you returned to the office of the narcotic squad, did there come a time when you did something with that evidence? A. Yes, sir. I conducted a

preliminary field test on this evidence, which test indicated by a positive color reaction the presence of a narcotic alkaloid.

* * * * * * * * * *

15 Q. All right; and did there come a time when Matron Burns came to the premises? A. There was, sir.

Q. And what did she do at that time? A. She took the defendant into the bathroom and searched her there.

* * * * * * * * * *

Q. Did Matron Burns turn anything over to anyone else in your presence? A. No, sir, not in my presence.

She turned, at the Women's Bureau, she turned something over to Officer Herring in my presence.

Q. In your presence? A. Yes, sir.

* * * * * * * * * *

Q. What was it she turned over to Herring in your presence? A. A small brown envelope which contained a white powder, and also a gelatin capsule which contained

17 traces of a white powder.

Q. Did you initial the evidence that was turned over? A. Yes, sir, I did.

Mr. Flannery: Will you mark this small one Government No. 2 and the other one 2A? Mark the small envelope No. 2 and the larger envelope 2A.

(The envelopes were marked Government Exhibits Nos. 2 and 2A for identification, respectively.)

By Mr. Flannery:

Q. Now, Officer Raboy, I will show you first this top envelope, which has been marked Government Exhibit 2 for Identification, and I will ask you if you can identify that. A. Yes, I can identify this, sir.

Q. What is that? A. That is the envelope into which Officer Herring placed that small capsule.

Q. Was that at the Women's Bureau? A. At the Women's Bureau. Oh, he didn't place this evidence into the envelope at the Women's Bureau but in the office of the narcotic squad.

Q. What is that paper you have taken from the envelope there? A. That is the paper in which was wrapped the small capsule.

Q. Now, I show you what has been marked Government Exhibit 3 for Identification.

18

Do your initials appear on that? A. Yes, sir, they do.

Q. Is that also evidence, or does it contain evidence turned over to Herring in your presence? A. This was turned over to Officer Herring along with the capsule at the Women's Bureau.

Q. Officer Herring then took charge of this? A. That is right, sir.

Mr. Flannery: Your witness.

## CROSS EXAMINATION

By Mr. Owen:

Q. Mr. Raboy, on the night of the 16th of December I believe you stated that you knocked on the door of the questioned premises; is that correct? A. I don't recall whether I knocked or any of the other officers knocked.

Q. How many officers were with you? A. Two other officers were with me.

Q. You don't remember which one knocked? A. No.

Q. Are you sure somebody knocked? A. Yes, sir.

Q. Was there a bell? A. I don't recall, sir. I don't recall now whether we knocked at the door or somebody pressed the button.

19

Q. Then you are not sure whether somebody knocked; is that right? A. That is right, sir.

Q. Was this the type of door where you have a vestibule area, a front door, a heavier front door, and then a sec-

ondary door? A. Well, all I recall is the large front glass door, a front door.

Q. And that was right on the outside of the house then? A. That is right.

Q. And is that the one you are describing in detail about the venetian blinds on it? A. I believe so, sir.

Q. And you said you saw somebody peep through the venetian blinds in that door? A. Yes, sir.

Q. Who was it? A. I don't know, sir.

Q. Was it male or female? A. I don't know.

Q. Then I believe you told us in response to Mr. Flannery's questioning that you heard someone inside yell: "It is the police"; is that correct? A. Yes, sir, or words
20 to that effect.

Q. What do you mean by words to that effect? A. Either it is the police, or the police. It was—I heard definitely the words: "The police."

Q. You heard the words "The police"? A. That is right.

Q. Now, were you gentlemen wearing uniforms? A. No, sir.

Q. You were dressed similarly to your dress today? A. Yes, sir, that is right.

Q. And your confederates were also dressed in plain clothes; is that correct? A. Yes, sir.

Q. Now, I believe you said that after you saw this face peer through the venetian blinds and heard someone in there yell: It is the police, or police, that you then entered without any further knocking or any sort of signal? A. Well, I stated that we had heard the scurrying and then we forced entrance.

Q. You mean you broke the door down? A. We didn't break it down; we just forced it open.

Q. Was it locked? A. Yes, sir, it was.

Q. Then you just broke the door or broke the lock? A. We forced the door open.

21 Q. Did it take much force? A. Well, I don't think so.

Q. Did you force it open? A. No, I didn't.

Q. Did you see someone force it open? A. Yes, sir.

Q. Then at no time did you or any of your confederate officers make any statement or announcement to anyone inside, did you? A. No, sir.

Q. You didn't identify yourselves as to who you three men were coming up to the door, did you? A. No, sir.

Q. And forced your entrance without any type of statement as to who you were? A. That is right, sir.

* * * * * * * * * *

29 Q. Now, getting down to the crucial part of your testimony, I believe that you have explained in response to Mr. Flannery's questions that you saw this lady seated at the counsel table leave the back room, walk a few steps, or rush a few steps up this narrow corridor and turn to her right into a bathroom, which was the next door to the right as she was leaving the back room in the end of the hallway? A. That is right, sir.

* * * * * * * * * *

32 Q. What were you doing at the time? A. Well, Officer Hawkins had the defendant Cherokee under arrest, and I was talking to him, facing the others.

Q. You were talking to Officer Hawkins, facing the others, when you noticed her walking rapidly out of the kitchen? A. That is right, sir.

Q. Then I understand Hawkins and the others were
33 between you in the middle of the kitchen and the defendant at relatively this position near the door? A. No, sir. Officer Hawkins was to one side of me.

Q. Was Officer Hawkins to the left side as you face the blackboard or to the right side? A. To the left side of me.

Q. And you were facing to your—you were looking to your right? A. He was in front and to the left of me.

Q. And you happened to turn around and notice her start out? A. It wasn't a question of turning around. I was facing toward them and towards him at the same time.

Q. You were facing in two directions? A. No, sir, I wasn't facing in two directions.

Officer Hawkins and the defendant Cherokee was in front of me and to my left, and the other defendant Gaskins was up near the wall where I could see her.

Q. And to your right? A. Not to my right. I would say almost directly opposite me.

Q. Well, if you were in the middle of the kitchen facing over to this side, and she was up here, would she not be to your right—I will withdraw the question, Your Honor.

Now, did you ask her where she was going or tell
34 her not to leave the kitchen? A. No, sir, I didn't.

Q. And you immediately stopped talking with Officer Hawkins and started out after her; is that correct, sir? A. That is right, sir.

Q. Now, was there a door on this doorway into the kitchen? A. I don't recall whether there was a door on the doorway to that or not, sir.

Q. Was there a door closed across this doorway when you observed her leaving the kitchen? A. No, sir.

Q. And if there was a door there, would you say it was open? A. When I left that door, yes, sir, the door was open.

Q. When she left the room, the defendant? A. I didn't notice any door.

Q. You were watching her leave the room, were you not? A. Yes, sir.

Q. Did you notice whether she had to force the door open or open a door to get out of the kitchen? A. No, sir, she didn't have to open a door.

Q. I beg your pardon? A. She didn't have to open the door. She just went out.

35 Q. Was there or was there not a door on the bathroom which is designated here by the letter B? A. Yes, sir, there was a door on the bathroom.

Q. Was that door open or closed when you observed her go around into the bathroom and you followed her approxi-

mately six feet behind? A. When I got to the bathroom the bathroom door was open.

Q. Were you able to see her at all times leaving as you were following her? A. Not at all times, sir.

Q. There was a time when she disappeared from your view; is that correct? A. Temporarily.

Q. Where were you when she disappeared from your view? A. Well, I was practically at the entrance of the kitchen door.

Q. And where did you last see her before she disappeared from your view? A. Entering the bathroom.

Q. You were at this door and she was entering this door? A. That is right.

Q. When she disappeared from your view? A. That is right, sir.

36 Q. Well, did she or not, when you saw her enter this door, have to open a door to get into the bathroom? A. No, sir, I didn't.

Q. She did or did not? A. Maybe I misunderstood the question. Will you repeat the question, sir?

Q. Did she have to open a door to get into the bathroom? A. I don't know whether she opened a door or not, sir.

Q. Were you watching her go into the bathroom? A. The door was open, as I stated, when I got to the bathroom.

Q. Well, did you watch her go into the bathroom? A. Well, I stated she temporarily was out of my view just for a moment.

Mr. Owen: Your Honor, I think that the question admits of an appropriate answer, and I think it is a proper question.

Mr. Flannery: I think the answer was responsive to the question.

The Court: Well, not quite, perhaps.

The question is whether the witness saw her open the bathroom door.

The Witness: No, I didn't see her open the bathroom door.

* * * * * * * * * *

37 Q. Now, you say she disappeared from your view. When was it again that she came into your view? A. When I turned the corner and went into the bathroom.

Q. And what was she doing when she again entered your view? A. She had her hand underneath the toilet seat.

* * * * * * * * * *

38 Q. Now, how was she putting the stuff in the commode when you saw her? A. I just saw her placing her hand underneath the seat of the cover, that is all.

* * * * * * * * * *

42 Q. All right, sir. Now, let me confront you with another series of questions and answers, taken under sworn testimony, on the same day in question, or on the date of the hearing.

Mr. Flannery: What page?

Mr. Owen: It is page 23, at the bottom.

By Mr. Owen:

Q. "Question: Now, when you were following behind her when she entered, was the door open or closed?" That is speaking of the bathroom door.

Now, your answer: "As I stated, she went right around the corner to the bathroom, and as far as I know, the door was open.

43 "Question: You do not know whether she had to open the door to get in it or not?" That is referring to the bathroom door again.

"Answer: No, sir, I do not."

The Court: Is that for the purpose of impeachment?

Mr. Owen: Sir?

The Court: Is that for purpose of impeachment?

Mr. Owen: I was in hope of refreshing his recollection, Your Honor.

The Court: Isn't that substantially what he testified to?

Mr. Owen: It was my understanding that he explained

that he saw her enter the bathroom and saw that she did not have to open a door to get into the bathroom.

The Court: Well, what is the distinction between them?

Mr. Owen: Here he stated he doesn't know whether she had to open the door to get into the bathroom or not.

The Court: My recollection is he stated he didn't know whether she had to open the door to get into the bathroom in his testimony here.

The Court does not desire to interfere with counsel's cross examination in any way, except that there is no purpose to be served in causing the witness to repeat the testimony which is substantially in accord with the testimony given here.

This is not to be considered by the jury as any re-
44 flection on the defendant or to prejudice the defendant's case in any way. It is simply made, a statement made by the Court in order to expedite the trial of the case in an orderly way.

If it is for impeachment purposes—

Mr. Owen: Well, Your Honor, we may anticipate an offer, by way of an offer of proof, that this apparently little point will loom very importantly as the trial progresses. It is only on this narrow point that we are—

The Court: What is this narrow point?

Mr. Owen: As to whether or not he saw without being required to open the door. We believe that he invaded the privacy of these ladies in this bathroom and that the door was not open. Other than that we are not attacking his testimony.

* * * * * * * * * *

46 Q. No, I want to know, sir: When you saw her enter the bathroom, whether she had to open a door or whether she walked in? A. I stated, I didn't see her open a door, sir.

Mr. Owen: Your Honor, I feel that the question can be answered directly, and I certainly think that there is equivocation now on the part of the witness.

Mr. Flannery: I think the point has been belabored. The witness has answered to the best of his ability and quite clearly.

I object on the ground it is repetitious.

Mr. Owen: I will discontinue this line, Your Honor, and try to get at it this way.

* * * * * * * * * *

48 Q. Now, would you say, sir, that you had any concrete reason or any probable cause, other than mere suspicion, when you followed the defendant?

Mr. Flannery: I would object to that, Your Honor,

49 as calling for a conclusion on a question of law, which woud not be proper before the jury. It is a question of law.

The Court: It is not a question for the jury to pass on. It is a question of law.

You may approach the Bench if you wish.

Mr. Owen: I would appreciate it, Your Honor.

(Thereupon counsel approached the Bench and the following occurred:)

The Court: The Court understands that has been passed upon at the pre-trial proceeding, that that question is the question upon which, or one of the questions, upon which the Court's determination of the motion was made. That is one of the bases for that determination, and that question is one of the bases, one of the predicates for the Court's ruling, as the Court understands it.

Mr. Owen: A similar question was presented at the pre-trial motion.

The Court: That is not a question to be presented to the jury. That is a question of law and fact, to be considered by the Court on consideration in connection with the question of law, as to whether or not probable cause has been established. That has been the subject of inquiry, as the Court understands it, and the Court stands subject to correction if that is not as represented, but if it is as the Court represents it, the objection is sustained.

Mr. Stein: Our position is this, that there is developing or will develop a question of fact as to whether or not the officer had serious variances in his testimony, and we would like to show that to the jury here.

The Court: The Court understands your purpose, except that that has already been determined as a matter of law by the previous Court at a hearing on the pre-trial proceedings. That is the basis for it.

Mr. Stein: Yes, sir, but the point here is that it is our position or our request that this Court, since there are variances in the facts, submit the facts to the jury for their determination.

Mr. Owen: Well, we do not mean to belabor the point. That is our position.

The Court: The Court will note the objection of the defendant.

The objection of the Government is sustained.

* * * * * * * * * *

The Court: Counsel may proceed.

Mr. Flannery: May we approach the Bench, Your Honor?

The Court: You may.

(Thereupon counsel approached the Bench and the following occurred:)

Mr. Stein: If the Court please, defense counsel and Government counsel have entered into a stipulation contingent upon approval of the Court, of course, that we will stipulate as to the Government Exhibits, possession of the narcotics, and it would be that if the chemist testified—we will stipulate as to the continuity of possession of the exhibits. One witness said he got them and another witness said he gave them to the chemist, and we will stipulate on the contents.

The Court: The requirement of continuous possession is satisfactory?

Mr. Stein: Yes, sir.

We will also stipulate that the Government witness Ma-

tron Dorothy Burns took from the body of the defendant, whatever the number of the exhibit is, from her stocking.

The Court: You won't require her testimony then?

Mr. Stein: No.

The Court: That will substantially cut down the
56 time.

Mr. Owen: We will stipulate the rest of the Government's case, the rest of the witnesses.

The Court: Are you going to put on testimony?

Mr. Owen: Yes, sir.

The Court: Who is going to announce the stipulation?

Mr. Flannery: I will.

Mr. Owen: Can we include in the stipulation that these photographs show substantially the same condition as they were on the night involved as far as the doors are concerned, and we would like you to show them to any witness you care to.

Mr. Flannery: Will you give me an opportunity to show them?

Mr. Owen: Yes, to any of your witnesses.

Mr. Flannery: Suppose we do the stipulation first and then I will show these pictures to the witnesses.

The Court: Do you want a little recess then?

Mr. Flannery: Yes, about five minutes. I will show them, and then if I can stipulate I will stipulate.

Mr. Stein: That is all right.

* * * * * * * * * *

58 Mr. Flannery: It has been agreed and stipulated to and between counsel for the Government and counsel for the defendant that Officer Sherwood Herring if he had testified would testify substantially that he accompanied Officer Raboy and Officer Hawkins to premises 629 Q Street, Northwest, on December 16, 1952, and that Officer Herring would have testified that he received from Police Matron Burns certain evidence which she received from the stocking, as you recall, of the defendant in the case, that is, Gov-

ernment Exhibit 3, and that he, as I say, received that from Matron Burns, and that there came a time when he eventually, on December the 19th, turned it over to the chemist for analysis.

The officer will testify and it has been stipulated to that later that night that he went to the Women's Bureau and received certain evidence from Matron Burns at the Women's Bureau which she had recovered or taken from the pocketbook of the defendant in this case, and that he took that evidence and in turn marked it and turned it over to the chemist, where it was subsequently analyzed by the chemist.

This officer, if he had testified, would testify that he did not see Ola Mary Gaskins enter the bathroom, since he was occupied doing other things, but that upon hearing a call, he walked up the hall to the bathroom, looked in,
59 and saw Officer Raboy reaching in the commode, or some place, for something, and that Officer Raboy picked up this envelope from the commode. However, this officer would not have testified that he saw defendant Gaskins put that evidence in the commode.

It has been agreed to that Officer John Hawkins, if he testified, would have testified that he also went to premises 629 Q Street, Northwest, about 10:40 p.m., on December 16, 1952.

Now, this officer would have testified that he saw Officer Raboy reach into the commode and get this envelope, which has been described to you by Officer Raboy. This officer would not, however, testify that he saw the defendant deposit an envelope in the commode because, he, Officer Hawkins, was occupied with this Clifton Neal and that he was effecting his arrest, but that upon hearing a call, walked to the bathroom in time to see Officer Raboy reach in the commode and pick up an envelope, which has been described to you.

This officer would have testified that when he saw Officer Raboy remove this small brown envelope, it contained three

gelatin capsules, each containing a white powder, and this officer would have testified further that he observed Matron Burns hand Officer Herring a cream-colored envelope, with Matron Burns's initials on the envelope.

It has been agreed and stipulated that if Matron
60 Dorothy Burns, if she had been called as a witness, would have testified that at 11 p.m., pursuant to a telephone call, she came on December 16, 1952 to the premises 629 Q Street, Northwest, and went to the premises on the first floor, went into the bathroom located on the first floor of the above-stated address, and searched the defendant, and while searching the defendant, she removed from her stocking a small brown-colored envelope containing a white powder, which she turned over to Officer Herring, and which she marked as evidence for identification.

Matron Burns would further testify that later at the Women's Bureau she again searched the defendant and in her wallet she found a small brown envelope containing a quantity of white powder, and that she called Detectives Raboy and Herring, who responded, and she handed the evidence to Officer Herring, initialling the date and the evidence as the articles recovered from the wallet of the defendant.

Finally it has been stipulated that the chemist, James L. Young, if called would have testified that he made an analysis of the contents of the various exhibits, namely, the exhibits taken from the commode and taken from the stocking, and the exhibit taken from the woman's pocketbook at the Women's Bureau, and that he made a chemical analysis and found that these various exhibits contained 29.7 grains of heroin hydrochloride, quinine hydrochloride and milk sugar.

61 Now, to complete the record, I suppose I should have this other exhibit marked.

Mr. Owen: Your Honor, the defense will have no objection to the admissibility of any evidence.

Mr. Flannery: This is 4 and 4A.

(The articles were marked Government Exhibits No. 4 and 4A for Identification, respectively.)

Mr. Owen: Your Honor, may it be corrected that we withdraw the last remark. We do object to the narcotics being introduced into evidence for we feel they should have been suppressed.

The Court: Yes. That objection will be noted for the record, Mr. Reporter, and the objection will be overruled.

Mr. Flannery: Now, at this time, Your Honor, I will offer the Government Exhibits into evidence, namely, the evidence taken from the commode there at 629 Q Street, which would be Government Exhibits 1 and 1A, and I offer in evidence Government Exhibits 2 and 2A, and 3, and then finally the last two exhibits, Your Honor.

The Court: Designate three. Do you care to characterize it? What does that consist of?

Mr. Flannery: They, Your Honor, are the Government Exhibits 2 and 3, are the contents of the pocketbook at the Women's Bureau which were recovered by Matron
62 Burns and subsequently turned over to Officer Herring. 2A is the large property envelope in which they were placed by Officer Herring and delivered subsequently to the chemist.

And then finally the last two exhibits are 4. 4 is the envelope recovered from the stocking of the defendant at 629 Q Street, and 4A is the large property envelope into which 4 was placed and subsequently delivered to the chemist.

Also I think, to complete the record, the record should reflect that none of these exhibits had the tax stamps on them as required by the statute.

The Court: Anything further?

Mr. Flannery: That completes the record, Your Honor.

* * * * * * * * * *

CLIFTON NEAL 67

was called as a witness by the defendant and, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Owen:

Q. Your name is Clifton Neal? A. Yes, sir.

* * * * * * * * * *

68 Q. And can you recite and tell us just briefly what occurred on this night when your wife and you were in premises 629 Q Street? A. Well, we were in the parlor of 629 Q Street, on the first floor, and looking at TV, television, and the bell rang.

Q. What kind of bell? A. A regular doorbell.

Q. Oh, the door? A. Yes, the front door.

69 Q. Will you speak up a little so the members of the jury can hear you? A. I went to the door. I went to the vestibule, that is, and peeked through the venetian blinds to see who it was, and it was some men that I hadn't seen before, three, four men it was—three white men and one colored man at the door, and so I remembered that I had some narcotics on my person.

Q. Now, what were you doing with narcotics in your possession? A. Well, I am a user of narcotics.

Q. And how long have you been using narcotics? A. About a year and a half.

* * * * * * * * * *

A. Well, I went back to the parlor and I called Ola to come.

70 Q. Who is Ola? A. Right there; my wife, and she came to the parlor door, and I had three packages on me.

So I said: Take these and throw them away, and she hesitated as if she was afraid to do it, and I said: Hurry up

and take these and do what I said, and she took the packages and went back toward the bathroom.

* * * * * * * * * *

72 CROSS EXAMINATION

* * * * * * * * * *

74 Q. Now, you testified on direct examination that you were a user of narcotics? A. Yes.

Q. You were also a seller of narcotics, weren't you? A. That is what I was convicted of; yes.

Q. Well, were you a seller of narcotics or not? A. No.

Q. You were not? A. No.

Q. You deny that? A. I denied it but the Court convicted me of it, so whatever the Court say, that is what I am.

Q. A jury convicted you? A. Yes, a jury convicted me.

Q. You testified that you gave, I believe, three packages to Ola Mary Gaskins, and what did you say to her at that time? A. I said to her to take these and throw them away.

Q. Did you tell her to throw them in the commode? A. I said: Thow them away.

* * * * * * * * * *

76 Thereupon

OLA MARY GASKINS

the defendant, was called as a witness in her own behalf and, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * * * * * * * *

78 Q. Now, you have heard from the witness stand the story of what happened on this night from several witnesses, or from two witnesses, and can you tell us now what you know of the occurrence on December 16, 1952 in the premises concerned? A. Well, it was like my husband

said. We were in the parlor looking at TV, when the bell rang, and he went to the door, and he must have evidently thought it was somebody wrong, and he said it is the police, and he rushed back in, and he handed me these packages and told me to get rid of them, and I suspected what they were, and I didn't want to touch them, and he told me to get rid of them.

Q. You suspected that they were narcotics? A. Yes.

Q. Now, how did you happen to suspect that they were narcotics? A. Because I knew he used them, and he
79 had to have them, and when he told me to get rid of them, I knew it must be something that wasn't right, and I taken them because he told me to take them.

Q. What did you do? A. I went back to the kitchen where I was nervous, and I didn't know exactly what to do, and while I was back there, I heard all this noise at the door, and these three people, or men, rushed in and I tried to put the drugs where I thought I could get rid of them best because it all happened so fast, and I didn't know what to do, and that is why I had them in three different places.

Q. You had them in three different places? A. Yes, because I thought I could get rid of them sometime during the commotion.

Q. Well, was your husband able to hold the people in the parlor very long? A. Well, he held them long enough for me to put them in those three places, and then when I looked everybody was in the kitchen, and when they were so concerned with him, that is when I went to the bathroom.

* * * * * * * * * *

80 Q. And what did you do when you were in the kitchen and the officers had brought your husband
81 back there? A. Well, they were talking to him and trying to make him say that he was Cherokee.

* * * * * * * * * *

Q. What happened then? What did you do? A. Well, I slipped out.

Q. Where did you slip out from? A. From the kitchen.

Q. Where did you slip out to? A. To the bathroom.

* * * * * * * * * *

82 Q. What were you going in the bathroom for? A. To try to get rid of these drugs that my husband told me to get rid of.

Q. In entering the door, did you enter alone or with someone? A. I entered by myself, but as I was closing the door, that is when Marie Bruce came in.

83 Q. Marie Bruce? A. Yes.

Q. Came in also? From where? A. Well, I don't know. I didn't see her in the kitchen. She might have been in there, but in the excitement, I don't know whether she came from the kitchen or the hall.

Q. Did you close the door when you came in the bathroom? A. Well, I had closed, and it was almost closed when she, you know, pulled it open and came in behind me.

* * * * * * * * * *

85 CROSS EXAMINATION

By Mr. Flannery:

* * * * * * * * * *

86 Q. Now, in September of 1940, were you convicted of petty larceny in the District of Columbia? A. Yes, I said before I had been convicted about seven or eight times.

Q. Seven or eight times, for larceny, in the District of Columbia? A. Yes.

Q. Now, in addition to that, in 1945, in Philadelphia, April 1945, were you not also convicted of larceny? A. Yes, I said that.

Q. In 1950, May 1950, in Philadelphia, you were again convicted of larceny, were you not? A. Yes; in 1950.

Q. Now, it is a fact, isn't it, when these men came to the door of premises 629 Q Street that night, that your husband yelled "Police," didn't he? A. Yes, he said: The police.

Q. And did you run back to the kitchen; is that your testimony? A. After he handed me these packages, I went back to the kitchen.

* * * * * * * * * *

89 Q. Well, then, it is a fact that you went into the bathroom? A. Yes, I did.

Q. And lifted the commode and flushed the toilet and threw certain narcotics into the commode; isn't that

90 a fact? A. That is a fact.

* * * * * * * * * *

114 The Deputy Clerk: Mr. Foreman, has the jury agreed upon a verdict?

The Foreman: We have.

The Deputy Clerk: What say you as to the defendant Ola Mary Gaskins on Count 1?

The Foreman: Guilty.

The Deputy Clerk: On Count 2?

The Foreman: Guilty.

* * * * * * * * * *

117 Filed in Open Court Feb. 24, 1953. Harry M. Hull, Clerk

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Impanelled January 5, 1953, Sworn in on January 6, 1953

The United States of America

v.

Ola Mary Gaskins

Criminal No. 287-53. Grand Jury No. 91-53
Vio. 26 U.S.C. 2553a, 21 U.S.C. 174

The Grand Jury charges:

On or about December 16, 1952, within the District of Columbia, Ola Mary Gaskins purchased, sold, dispensed and

distributed, not in the original stamped package and not from the original stamped package, three envelopes containing a mixture totaling about 29.7 grains of heroin hydrochloride, quinine hydrochloride and milk sugar.

Second Count:

On or about December 16, 1952, within the District of Columbia, Ola Mary Gaskins facilitated the concealment and sale of three envelopes containing a mixture totaling about 29.7 grains of heroin hydrochloride, quinine hydrochloride and milk sugar, after said heroin hydrochloride had, with the knowledge of Ola Mary Gaskins, been imported into the United States contrary to law. This is the same heroin hydrochloride which is mentioned in the first count of this indictment.

(s) Charles M. Irelan, Attorney of the United States in and for the District of Columbia.

A true bill: (s) Horace Walker, Foreman.

118 Filed Feb. 27, 1953. Harry M. Hull, Clerk

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States

v.

Ola Mary Gaskins, Defendant

Criminal No. 287-53

Charge Vio. 26, U. S. Code, Section 2553a
Vio. 21, U. S. Code, Section 174

**PLEA OF DEFENDANT**

On this 27 day of February, 1953, the defendant, Ola Mary Gaskins, appearing in proper person and by his attorney, T. E. McKenzie, Esquire, being arraigned in open Court

upon the indictment, the substance of the charge being stated to him, pleads Not Guilty thereto.

By direction of Walter M. Bastian, Presiding Judge, Criminal Court No. 4.

Harry M. Hull, Clerk, by (s) Richard L. Greener, Deputy Clerk.

Present: United States Attorney, by Victor Caputy, Assistant United States Attorney. J. Rawls, Official Reporter.

119 Filed Oct. 29, 1953. Harry M. Hull, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States of America
v.
Ola Mary Gaskins

Criminal No. 287-53

**MOTION TO SUPPRESS THE EVIDENCE**

Comes now the defendant, Ola Mary Gaskins, and moves this Honorable Court to suppress the evidence seized on December 16, 1952, which is being held as evidence against her, and as grounds therefore says:

1. That the search of her person was illegal.

2. That the search of the premises, 629 Q Street N.W., Washington, D. C., was illegal so far as it relates to the above described articles.

3. And for such further reasons as may appear from the record and urged upon the Court at the time of the hearing of this Motion.

(s) Wm. E. Owen and Ralph Stein, 900 F Street N.W., Washington, D. C., Attorneys for Petitioner.

Service of a copy of this Motion and annexed affidavits is hereby acknowledged this 29th day of October, 1953.

(s) John C. Conliff, Assistant U. S. Attorney.

* * * * * * * * * *

121 Filed Nov. 9, 1953. Harry M. Hull, Clerk

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States

v.

Ola Mary Gaskins, Defendant

Criminal No. 287-53. Charge Federal Narcotic Laws

On this 6th day of November 1953 came the attorney of the United States; the defendant in proper person and by his attorneys, William E. Owen and Ralph Stein, Esquire; whereupon the defendant's motion to suppress the evidence, coming on to be heard, after argument by counsel, is by the Court denied.

By direction of F. Dickinson Letts, Presiding Judge, Criminal Court No. 2.

Harry M. Hull, Clerk, by (s) Harry R. Martin, Deputy Clerk.

Present: United States Attorney, by Thomas A. Flannery, Assistant United States Attorney. Robert I. Thiel, Official Reporter.

* * * * * * * * * *

123 Filed Mar. 18, 1954. Harry M. Hull, Clerk

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America

v.

Ola Mary Gaskins

Cr. No. 287-53

On this 12th day of March, 1954, came the attorney for the government and the defendant appeared in person and [1] by counsel, Wm. E. Owen, Esquire.

It is adjudged that the defendant has been convicted upon

her plea of [2] not guilty and a verdict of guilty of the offense of Vio. 26 U.S.C. 2553a, 21 U.S.C. 174 as charged [3] and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It is adjudged that the defendant is guilty as charged and convicted.

It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of [4] Six (6) months to Two (2) years and to pay a fine of Fifty Dollars ($50.00).

It is adjudged that [5] the payment of the fine be and is hereby suspended.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

(s) Charles F. McLaughlin, United States District Judge.

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[1] Insert "by counsel" or "without counsel; the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel." [2] Insert (1) "guilty," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. [3] Insert "in count(s) number " if required. [4] Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding or unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as

provided by law. [5] Enter any order with respect to suspension and probation. [6] For use of Court wishing to recommend a particular institution.

* * * * * * * * * * *

151 Mr. Flannery: A person known as Clifton Neal.

Now, at eight o'clock—approximately around 8 p.m. that night—the police received information that Clifton Neal was at a certain premises 629 Q Street, N.W. Armed with the search warrant, the police went to that premises, went to the first floor to a certain room, knocked at the door.

They were refused admittance when someone opened the door, said, "Police," and then closed the door.

The police then forced the door open, went in and arrested Clifton Neal, who was present in the premises. Also present in the premises were certain other individuals, one of them being the defendant in this case, Ola Mary Gaskins.

Upon the police entering the room and placing Clifton Neal under arrest, Ola Mary Gaskins ran from the room to the bathroom. She was followed by Officer Sherwood Herring, who saw her put her hand under the commode and then flush the commode.

Officer Rayboy then went into the bathroom, lifted the top to the commode, saw a brown envelope floating on top, which he picked up, looked into, and saw some gelatine capsules.

He then placed Ola Mary Gaskins under arrest. An officer from the women's bureau, a woman officer, a ma-

152 tron, was summoned and she then searched Ola Mary Gaskins and found on the upper part of her left stocking a brown envelope which also had a gelatine capsule. The defendant Ola Mary Gaskins was then taken to the Women's Bureau and from her wallet was recovered certain other evidence—I believe two brown envelopes containing a white powder and a gelatine capsule.

Those are the facts, Your Honor.

The Court: Mr. Owen, do you agree to that statement?

Mr. Owen: No, we are unable to do so, Your Honor. It is our contention, contrariwise, that no one saw or knew what was going on in the bathroom when this defendant was in the bathroom. I see the Government's statement differs in that they claim an officer saw into the bathroom what was going on, and that the door was not closed.

So, Your Honor, we will, of course, have to take testimony.

* * * * * * * * * *

153 OLA MARY GASKINS,

the defendant, was duly sworn, and was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Owen:

Q. You are Mrs. Ola Mary Gaskins, the defendant in this case? A. Yes, I am.

* * * * * * * * * *

154 Q. Did you or did you not know during this occurrence that an arrest warrant had been issued for the said Clifton Neal? A. I didn't know it until they came in. I didn't know that they had an arresting warrant for Clifton Neal.

Q. Did you or did you not know it after they were in? A. Yes, I knew it after they came in.

* * * * * * * * * *

155 Q. Can you tell us in relation to the time when the bathroom door was closed when you deposited these drugs, or envelope, or whatever it was you had, into the commode? A. When she came in behind me she shut the door, I threw it in and flushed the toilet, and as the toilet was flushing this officer opened the door and came in and rushed to the toilet and picked up this brown envelope.

156 Q. Tell me whether or not the police in executing the arrest warrant for Clifton Neal grabbed hold of anyone else who was in these premises. A. They grabbed me and the girl that was in the bathroom.

Q. Before or after you went into the bathroom? A. After I went into the bathroom.

* * * * * * * * * *

## CROSS EXAMINATION

By Mr. Flannery:

* * * * * * * * * *

157 Q. Remember a knock at the door? A. Yes, I remember.

Q. Who went to the door? A. My husband, Clifton Neal.

Q. And then he closed the door and didn't let the police in, isn't that right? A. That's right, he didn't let them in.

Q. And he yelled, "Police," didn't he? A. Yes.

Q. Then the police came in the door, isn't that a fact—they pushed the door open? A. That's correct.

Q. And they arrested Clifton Neal? A. Not at the time they didn't arrest him; there was some question about his identity.

Q. When they found out his identity? A. They arrested him.

Q. At that time you turned and ran from the room into the bathroom? A. I didn't run, I walked from the room. They were so occupied with my husband until I had a chance to walk from the room, I just walked away.

158 Q. You were waiting for a chance until they were occupied so you could slip out into that bathroom and put the drugs in the commode, isn't that right? A. Yes, my husband had told me to do so, and I tried to do it.

Q. So then you did go in and put the drugs in the commode and flushed it, didn't you? A. That's right.

Q. You were intent on doing that and not with looking at the door, were you? A. No. Well, I just threw them in

there and flushed the toilet. I didn't have to look to see what I was doing, because I knew where the toilet was.

Q. And then as soon as you did that the officer came in, grabbed you, and reached down in the commode and got the drugs? A. He didn't grab me first, no, he must have heard the toilet flushing and came in the door and went straight to the toilet.

Q. Did you see him come in the door? A. Sure I seen him come in the door. He pushed by me and this girl and went and picked this envelope up that was floating on the water.

Q. What were you doing when he came in the door? A. Standing there—just standing there hoping that those drugs would go down.

* * * * * * * * * *

159 SEYMOUR RABOY

was called as a witness by the Government, and being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Flannery:

Q. Your name is Seymour Raboy and you are a member of the Metropolitan Police Force attached to the nar-
160 cotics squad? A. That's correct.

Q. And you were so attached to the narcotics squad of the Metropolitan Police Force on December 16, 1952? A. That's right, sir.

Q. Directing your attention to that date and to the hours of around 8 p.m. or thereabouts, did you have in your possession a certain arrest warrant? A. The arrest warrant was not in my possession. I had knowledge of the arrest warrant.

Q. In whose possession was it? A. The United States marshal.

Q. At that time did you receive certain information relative to one Clifton Neal? A. Relative to a "Cherokee."

Q. Cherokee? A. Yes, sir.

Q. Was he also Clifton Neal? A. Yes, sir.

Q. Was the arrest warrant for him? A. The arrest warrant was for John Doe Cherokee—that is who the arrest warrant was for.

Mr. Owen: Your Honor, we will stipulate that the arrest warrant was proper and the arrest was proper of the party named therein.

161 By Mr. Flannery:

Q. Did you then go to premises 629 Q Street and place Clifton Neal, alias Cherokee, under arrest? A. Yes, sir, Officer Hawkins placed him under arrest.

Q. And you were with him? A. Yes, sir.

Q. When you got to the premises will you describe how you gained access to the premises? A. We knocked at the door. An unknown person came to the door and peered through, I believe, the venetian blind, and we heard the words, "The police," and scuffling, running back, so we forced entrance—Officer Hawkins, Officer Herring, and myself.

Q. When you gained access to that room did you see Ola Mary Gaskins? A. Yes, sir.

Q. What was she doing at that time? A. She was in the kitchen along with the person we had the warrant for.

Q. What, if anything, did she do at that time? A. After the person we had the warrant for was placed under arrest she rushed to the bathroom and I followed behind her.

Q. Describe what happened as you followed behind her.

A. She turned the corner, and as I turned the corner
162 to the bathroom I observed her hand go underneath the closed commode, and she flushed the commode. I pushed her out of the way, lifted up the top of the commode, and there floating on top of the flushing commode was a small cream-colored envelope. I recovered that envelope and looked inside, and there were three gelatin capsules each containing a white powder inside this envelope.

Q. Did you then arrest her? A. Yes, sir, I placed her under arrest.

Q. Did there come a time that Matron Burns of the Women's Bureau responded to that address? A. Yes, sir.

Mr. Owen: Your Honor, we will stipulate all the facts subsequent to the initial seizure. We feel if one was illegal, the subsequent ones were. As to the facts, we will stipulate.

Mr. Flannery: Very well; I have no further questions.

* * * * * * * * * *

168 By Mr. Owen:

Q. Did you see the defendant take these drugs from any place or any part of her person prior to placing them into the commode? A. No, sir, I did not.

Q. You were observing her going into the bathroom, were you not? A. That's right, sir.

* * * * * * * * * *

171 Q. I would like for you to give me some estimate. You said you followed her into the bathroom. How far behind did you follow? A. About five feet or six feet behind.

Q. Did you at any time try to restrain her from going into the bathroom? A. She reached the bathroom before I did.

Q. Did you call her back when she started to leave the kitchen? A. I don't recall saying anything to her except, maybe, "Hey." I didn't know who she was at the time.

Q. Did you in any way by command try to prevent her when you were five feet behind her from entering the bathroom? A. Maybe just by—

Q. Not maybe—first of all, did you? A. I don't recall saying anything to her.

Q. Was the door closed or open when you were following behind her five feet? A. The door was open when I entered the bathroom.

Q. No, when you were following behind her when she entered, was the door open or closed? A. As I stated, she

went right around the corner to the bathroom, and as far as I know, the door was open.

* * * * * * * * * *

173 Q. Can you tell me whether or not you had a reason to follow her out of the kitchen? A. Yes, I did.

Q. And what was that reason? A. When I saw her rushing to the bathroom.

Q. Was she walking or running? A. She was rushing, sir.

Q. How did you know where she was rushing to when she left the kitchen? A. I didn't know where she was rushing to, but I was following her.

Q. And did you command her to stop? A. I might have stated "Hey," or something like that. I don't recall my exact words.

* * * * * * * * * *

174 Q. Tell me about how long would you say that it was that this defendant was in the bathroom before she placed the drugs into the commode? A. She just rushed to the commode and placed the drugs into the commode.

Q. Did she make any effort to close the door behind her when she went into the commode? A. No, sir, the door was open when I entered the bathroom.

Q. Did you see her make any effort when you were following close behind her to close that door? A. No, sir, I did not.

Q. She walked straight in? A. She rushed straight into the bathroom.

* * * * * * * * * *

176 By Mr. Owen:

Q. Did you search this defendant, or anyone in your presence search her while she was in the kitchen prior to leaving the kitchen to go to the bathroom? A. No, sir.

Q. Was there anything which would have given you probable cause to suspect that she possessed narcotics?

Mr. Flannery: Objection.

The Court: That is a question for the Court.

By Mr. Owen:

Q. Was your reason for following her out of the kitchen based on suspicion, curiosity, or otherwise? A. Well, I would say it would be based on suspicion of her rushing out of the kitchen.

Mr. Owen: That is all the questions.

* * * * * * * * * *

177 Mr. Flannery: The Government has nothing further, Your Honor.

The Court: Mr. Owen, just two minutes.

Mr. Owen: The only thing, if the Court is interested in hearing any of the law, we would be glad to present it.

The Court: Let's pass that up.

Mr. Owen: All right, sir. That is all we have, Your Honor.

The Court: The Court thinks the motion must be denied.

(Thereupon, the hearing in the above-entitled case was concluded.)

# BRIEF FOR APPELLEE

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12,142

OLA MARY GASKINS, APPELLANT

*v.*

UNITED STATES OF AMERICA, APPELLEE

*APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA*


LEO A. ROVER,
*United States Attorney.*

LEWIS CARROLL,
THOMAS A. FLANNERY,
CARL W. BELCHER,
*Assistant United States Attorneys.*

## QUESTIONS PRESENTED

1. Can an entry, by police officers into a residence, which was stipulated on preliminary hearing to be "proper" and never questioned at trial be questioned for the first time on appeal?

2. In any event is it necessary for police officers in executing a "proper" warrant of arrest to identify themselves to the wanted person when such person has already peeped through the door at them, yelled "The Police" and is heard scurrying behind that door?

3. After said arrest is effected and the wife of the arrestee "rushes" from the room, two steps through a hallway, into a bathroom where she is simultaneously joined by another woman, is it an unreasonable search and seizure for the police officer, who has followed five or six feet behind during the above sequence, to enter said bathroom for the purpose of retrieving illegal narcotics which said wife is flushing down the commode?

# INDEX



## TABLE OF CASES



## OTHER REFERENCES

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 12,142

OLA MARY GASKINS, APPELLANT

*v.*

UNITED STATES OF AMERICA, APPELLEE

---

*APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA*

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## BRIEF FOR APPELLEE

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### COUNTERSTATEMENT OF THE CASE

On February 24, 1953, a two-count indictment was filed against appellant alone, charging purchase and concealment of narcotic heroin on December 16, 1952, in violation of 26 U.S.C. 2553a and 21 U.S.C. 174 (J.A. 25-26). Testimony pertinent to a preliminary motion to suppress was heard and the motion denied (J.A. 27-28, 30-37). A defense objection to introduction of the same evidence was overruled during the subsequent trial by jury (J.A. 4-6). On March 18, 1954, the judgment was filed, sentencing appellant to serve six (6) months to two (2) years imprisonment.[1]

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[1] The above-apparent one year lapse of time involved defense motions for continuances granted by the court below upon a showing of defendant's pregnancy, which originated sometime in January and terminated early in October, 1953. Defendant-appellant has been on bond since the events in question, lately on bond pending appeal.

The defendant-appellant filed a preliminary motion to suppress "the evidence seized on December 16, 1952" on the ground that "the search of her person was illegal" (J.A. 27). At the outset of the hearing on that motion her counsel stated that said search was "illegal in that it extended further than a permissible search under the circumstances of this case" (R. 150). Those circumstances being in controversy, preliminary testimony was then taken from the defendant and Police Office Raboy. In the course of the latter's examination, defense counsel "stipulate[d] that the arrest *warrant* [for another person, defendant's husband, then present in the premises in question] was *proper* and the *arrest* was *proper* of the party named therein" (Emphasis supplied. J.A. 34).

At the preliminary hearing defendant testified that the premises in question were the residence of a friend of hers and that she, defendant, did not reside there (R. 153). She stated that when there was a knock on the door of those premises her husband [the person named in the warrant] had gone to that door and "yelled 'police' " (J.A. 32). She further testified that, subsequently, after her husband had been placed under arrest and the parties were in the kitchen, she was "waiting for a chance . . . [to] slip out into that bathroom and put the drugs in the commode . . ." (J.A. 32). Defendant testified that as she did go two steps through the hallway (R. 154) into that bathroom, another girl, a friend, came into the bathroom behind her. That defendant herself was not the one who shut the bathroom door, but that the other girl had shut the door (R. 154). "When she came in behind me she shut the door, I threw it in and flushed the toilet . . . " (J.A. 31).

Also in that preliminary hearing, police officer Raboy testified that defendant had "rushed" from the kitchen and without knowing "where she was rushing to" (J.A. 36) he had "followed her" (J.A. 34) because he "saw her rushing" (J.A. 36) and was suspicious (J.A. 37). He was about five or six feet behind her, and perhaps had called "Hey" to her (J.A. 35, 36).

> "She turned the corner, and as I turned the corner to the bathroom I observed her hand go underneath the

> closed commode, and she flushed the commode. I pushed her out of the way, lifted up the top of the commode and there floating on top of the flushing commode was a small cream-colored envelope. I recovered that envelope and looked inside, and there were three gelatin capsules each containing a white powder inside this envelope (J.A. 34)."

She had "rushed straight into the bathroom" without making any effort to close the door behind her (J.A. 36), and the bathroom door was open when he entered the bathroom (J.A. 35).

This defendant had not been searched prior to these events (J.A. 36). Subsequent to these events other seizures were made from the person of the defendant, which seizures were the subject of another stipulation by counsel (J.A. 35, Br. p. 3). The motions judge denied the motion to suppress.

At the trial which followed Officer Raboy was the first witness and again testified as heretofore described; adding that, of the police officers entering the premises, Officer Hawkins knew and recognized "Cherokee" (defendant's husband) (R. —, J.A. 2). That either Hawkins or Herring (J.A. 10) had forced the door, after he, Raboy, had seen "somebody peep through the venetian blinds in the door," heard "the police," and "scurrying." When on the inside Officer Hawkins had placed "Cherokee" under arrest (J.A. 2). Thereafter Raboy testified to the circumstances surrounding his recovery of the package swirling in the commode (J.A. 2-4). There was no objection by the defense to this testimony.

At this point government counsel asked that said package be marked for identification. Whereupon defense counsel objected "to the introduction of this illegally seized evidence" (J.A. 4). After reciting that a preliminary motion had been heard on this matter, he stated "It is our purpose to renew that motion . . ." (J.A. 4). After defense inquiry whether the trial court was refusing to reconsider the earlier motion, the court stated (J.A. 5):

> You may make the motion. The court will consider it, but it will be under the condition that another judge

has ruled on a similar motion in a pre-trial procedure, but you may make it.

The objection to the exhibit was overruled (J.A. 6).

After all the evidence and instructions by the court, the jury returned a verdict of guilty. This appeal ensued.

## SUMMARY OF ARGUMENT

Appellant has stipulated that the entry into the house was lawful. He failed to raise the point at trial, and may not do so here. Being properly in the kitchen, appellant's "rushing" from the kitchen, two steps through the hallway, into the bathroom—afforded a reasonable basis for the police officer to follow 5 or 6 feet behind appellant and enter the bathroom behind still another woman. There was no invasion of any woman's "toilet." The narcotics were retrieved from the commode without prior search of appellant. The discovery of the narcotics was not the result of an unreasonable search and seizure.

## ARGUMENT

### I

### Entrance into the Residence Was Legal

Appellant has stipulated "that the arrest warrant [for 'Cherokee'—appellant's husband] was proper and the arrest [execution of that warrant] was proper . . . " (J.A. 34). Said stipulation was made at the preliminary hearing. A contrary position was never taken by appellant, even during the trial. In the trial, appellant sought simply to "renew the [prior] motion" (J.A. 4). Having stipulated away this ground; and, in any event having failed to raise in the trial court this particular ground for his motion, *United States* v. *Jones,* 204 F. 2d 745, 748-9 (7th Cir. 1953), appellant can not now urge that the officers were in the kitchen illegally.

Assuming, *arguendo,* said point may be raised, it is without merit. It is conceded the officers were acting pursuant to a warrant of arrest (Br. p. 2). Appellant herself testified that her husband, "Cherokee" had gone to the door in

response to their knock, and yelled "the police" (J.A. 23-4). One of the officers testified he saw someone peek through the venetian blinds, yell words to the effect "It is the police," and heard subsequent scurrying (J.A. 9). The officers promptly entered without comment.

Concerning this situation the author of an extensive writing on the subject of "Arrest Without a Warrant," in 22 Michigan Law Review 541, 803, has written:

> Before doors are broken, there must be a necessity for so doing, and notice of the authority and purpose to make the arrest be given and a demand and refusal of admission must be made, *unless this is already understood, or the peril would be increased.* (Emphasis supplied.)

The author cites, as authority for the italicized portion, the case of *Read* v. *Case,* 4 Conn. 166, 10 Am. Dec. 110 (1822), which deals with the arrest of a principal by the bail. In that opinion it appears that the principal did in fact have knowledge that the bail was seeking to effectuate his imprisonment. In awarding a new trial the Chief Judge of the Supreme Court of Errors of Connecticut acknowledged the general rule requiring a statement of purpose, but further stated (page 166 of 4 Conn.; page 111 of 10 Am. Dec.):

> . . . it would be a palpable perversion of a sound rule to extend the benefit of it to a man, who had full knowledge of the information he insists should have been communicated; and who waited only for a demand, to wreak on his bail the most brutal and unhallowed vengeance.

This law review article, and the sentence quoted therefrom were referred to with approval by this Court in *Accarino* v. *United States,* 85 U. S. App. D. C. 394, 401, 179 F. 2d 456, 463. *Read* v. *Case, supra,* was similarly reviewed on the page preceding those cited. The facts here, including the existence of an arrest warrant, are analogous to the facts in *O'Neal* v. *United States,* 105 A. 2d 740, 741

(Munic. Ct. App. 1954), appeal pending No. 12,333, where that Court stated:

> Nor can there be any serious claim that the police failed to identify themselves as they approached appellant's residence. Such a step was rendered unnecessary when one of the women inhabitants clearly identified them as they approached.

This identification and knowledge renders the instant case a recognized exception to the general rule reiterated in *Gatewood* v. *United States,* 93 U. S. App. D. C. —, 209 F. 2d 789 (1953). *Cf. Fraternal Order of Eagles* v. *United States,* 57 F. 2d 93 (3rd Cir. 1932).

## II

### The Retrieving of the Narcotics from the Flushing Commode Was Not an Unreasonable Search and Seizure

As we have seen the officers' entrance into the house was proper, and for the purpose of arresting "Cherokee." Said "Cherokee" was in the kitchen (Br. p. 2), therefore it was proper for the officers to be in the kitchen. The officers had a warrant for the arrest of "Cherokee," who has since been convicted of a narcotic violation (J.A. 22). Said "Cherokee" was searched while in the kitchen (R. 163). Appellant was not searched prior to the bathroom episode (J.A. 36). Appellant and "Cherokee" were common law husband and wife (R. 68). Officer Raboy testified that appellant "rushed," *i.e.* "moved rapidly" from the kitchen and because of this he followed within 5 or 6 feet behind her (J.A. 2-4). They traversed only some two steps in the hallway between the kitchen and bathroom (R. 154). Another woman went into the bathroom right behind appellant (J.A. 31). That other woman closed the door, if said door was closed (J.A. 24, R. 154). Officer Raboy testified that the bathroom door "was open" when he entered (J.A. 3, 35). The package of narcotics was retrieved from the commode (J.A. 3). Both women were "just standing there" (J.A. 33).

These facts indicate that Officer Raboy acted reasonably in view of the circumstances. *Cf. Ellison* v. *United States,* 93 U. S. App. D. C. —, 206 F. 2d 476 (1953). Though part of these events transpired in the bathroom there is no question of "privacy . . . [of] . . . toilet" (Br. p. 6). Nothing was taken from the person appellant (or any premises in which she had an interest). *Kwong How* v. *United States,* 71 F. 2d 71 (9th Cir. 1934); *Winslett* v. *United States,* 43 F. 2d 358 (10th Cir. 1930). *Cf. Gibson* v. *United States,* 80 U. S. App. D. C. 81, 149 F. 2d 381 (1945). The exhibit was retrieved from the commode, without any precedent search of appellate's person. This act was not a prohibited "seizure." *Hester* v. *United States,* 256 U. S. 57, 44 S. Ct. 445, 68 L. Ed. 898 (1924). In any event, there was no objection to the oral testimony of the officer regarding these events and the exhibit; but, only an objection to the physical exhibit. In these circumstances the oral testimony was properly received and establishes the reception of the physical exhibit *per se,* as nonprejudicial. *Cradle* v. *United States,* 85 U. S. App. D. C. 315, 318, 178 F. 2d 962 (1949); *Belcher* v. *United States,* 51 F. 2d 573 (8th Cir. 1931).

## CONCLUSION

Appellant also argues a third point, and in support thereof quotes from *Gatewood* v. *United States, supra.* Immediately following the portion of that opinion which appellant quotes, this Court further said: "But regardless of which judge made the ruling . . . it was error to do so." So here, regardless of which judge made the ruling, appellant respectfully submits that said ruling was not error.

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